

Copy

EXEMPT FROM FILING FEES
GOVERNMENT CODE § 6103

FILED

2014 OCT 20 A 11:45

STEVEN H. NASH
CLERK OF THE SUPERIOR COURT
COUNTY OF CONTRA COSTA, CA
BY: _____ DEPUTY CLERK

KAMALA D. HARRIS
Attorney General of California
MARGARITA PADILLA
Supervising Deputy Attorney General
HEIDI T. SALERNO
Deputy Attorney General
State Bar No. 157335
1515 Clay Street, 20th Floor
P.O. Box 70550
Oakland, CA 94612-0550
Telephone: (510) 622-2207
Fax: (510) 622-2270
E-mail: Heidi.Salerno@doj.ca.gov
*Attorneys for Plaintiff People of the State of
California, ex rel. Miriam Barcellona Ingenito,
Acting Director of the Department of Toxic
Substances Control*

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA

**PEOPLE OF THE STATE OF
CALIFORNIA, ex rel., MIRIAM
BARCELLONA INGENITO, ACTING
DIRECTOR OF THE DEPARTMENT OF
TOXIC SUBSTANCES CONTROL,**

Plaintiff,

v.

**ELECTRO-FORMING, CO.; MARION
PATIGLER; THE ESTATE OF
GERHARD PATIGLER; THE ESTATE
OF INGRID PATIGLER; AND DOES 1
THROUGH 50,**

Defendants.

Case No. C 13-01691

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION TO MODIFY PRELIMINARY
INJUNCTION**

Date: 2-4-14
Time: 9:12
Dept: 33
Judge: The Honorable Steven K. Austin
Trial Date:
Action Filed: August 8, 2013

TABLE OF CONTENTS

	Page
Introduction	1
Background	1
A. The preliminary injunction.....	1
B. The facility after issuance of the TRO and preliminary injunction	2
C. August 18, 2014 inspection and violations	4
1. Illegal Disposal of Hazardous Waste	4
2. Failure to Properly Containerize and Label Hazardous Waste.....	5
3. Failure to Conduct Weekly Inspections of Hazardous Waste Containers	6
4. Failure to Properly Containerize and Label Hazardous Waste.....	6
5. Failure to Maintain Properly Functioning Emergency Equipment	7
6. Failure to Submit a Completed Contingency Plan and Maintain a Copy on Site.....	8
7. Failure to Submit Required Source Reduction Plan	8
8. Failure to Train Employees.....	8
9. Lack of Knowledge of Hazardous Waste Generated	9
10. Failure to Properly Maintain and Submit Manifests	9
11. Failure to Properly Dispose of Hazardous Waste	10
Argument	10
I. The court should modify the preliminary injunction due to a material change in facts and to prevent harm to, and protect human health and the environment.....	10
A. The facility's most recent violations rise to the level of a material change in fact upon which the preliminary injunction was granted.....	11
Conclusion	17

TABLE OF AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page

CASES

<i>City of San Marcos v. Coast Waste Management, Inc.</i> (1996) 47 Cal.App.4th 320	11
<i>New Tech Developments v. Bank of Nova Scotia</i> (1987) 191 Cal.App.3d 1065	11
<i>Sontag Chain Stores Co. v. Superior Court</i> (1941) 18 Cal.2d 92	11

STATUTES

Code of Civil Procedure § 533	10
Health and Safety Code	
§ 25100	11
§ 25100(b)	11
§ 25101(a)	11
§ 25117.2	8
§ 25160(b)(1)(D)	9
§ 25181	11
§ 25184	11
§ 25189.2(c)	15
§ 25189(c)	14, 15
§ 25244.12	8

OTHER AUTHORITIES

6 Witkin, Cal. Procedure (3d ed. 1985)	11
California Code of Regulations Title 22	
§ 66262.11(b)	14
§ 66262.11(c)	14
§ 66262.34(f)	passim
§ 66262.34(a)	14
§ 66265.173	14

INTRODUCTION

Plaintiff, the People of the State of California, ex rel. Miriam Barcellona Ingenito, Acting Director of the Department of Toxic Substances Control ("DTSC"), request that this Court modify the preliminary injunction issued against Defendants Electro-Forming, Co. ("Electro-Forming"), Marion Patigler ("Patigler"), the Estate of Gerhard Patigler, and the Estate of Ingrid Patigler (collectively "Defendants") to prevent Defendants from generating hazardous waste at Defendants' plating facility located at 130 Nevin Avenue, Richmond, California ("Facility"). DTSC seeks to have the Preliminary Injunction modified to enjoin Defendants¹ from engaging in specified metal plating or metal stripping operations and any buffing, polishing, or grinding operations which generate hazardous waste. The request is based on information from recent inspections that reveals serious hazardous waste management violations are ongoing and that Defendants are in violation of this Court's entry of a preliminary injunction in this matter. A copy of the Preliminary Injunction is attached as Exhibit ("Exh.") 1.

BACKGROUND

A. The Preliminary Injunction

After discovering that Defendants had violated numerous hazardous waste statutes and regulations in connection with the operations at the Facility, including California's Hazardous Waste Control Law ("HWCL"), Chapter 6.5 of Title 20 of the Health and Safety Code, and its implementing regulations, DTSC filed this enforcement action. A Temporary Restraining Order ("TRO") was issued on November 12, 2013, ordering Defendants to cease their long history of unlawful hazardous waste management practices and to remove hazardous waste, which had been unlawfully stored at the Facility for many years, creating danger to the community and environment. This Court issued a Preliminary Injunction on March 5, 2014, enjoining Defendants from violating the HWCL in general and specifically requiring Defendants to: 1) Not dispose, or cause the disposal of any hazardous waste at any location, or any point, not authorized or

¹ Because Patigler is the sole person in charge of the daily operations and of the two employees at the Facility (Aurora Decl., at ¶ 25), this motion is directed at Patigler's management of the hazardous waste at the Facility.

1 permitted by DTSC; 2) Not transport hazardous waste without a valid registration; 3) Not deliver
2 hazardous waste to any location other than a permitted/authorized facility; 4) Not treat hazardous
3 waste without permit or authorization from DTSC; 5) Properly and timely dispose of accumulated
4 hazardous waste within 90 days and complete all manifests; use a valid generator identification;
5 and ship only to an authorized facility; 6) Not transfer, manage, store, or treat hazardous waste in
6 any tank without approval from DTSC; 7) Conduct and document daily inspections of hazardous
7 waste; 8) Properly perform a hazardous waste determination for all waste, except in determining
8 that certain wastes were not hazardous must use analytic testing only and not generator
9 knowledge; 9) Properly manage all ignitable, reactive, or incompatible hazardous wastes in
10 accordance with the law; 10) Maintain and operate the Facility in a manner that minimizes the
11 possibility of release of hazardous waste in accordance with the law, including immediately
12 collect, characterize, containerize and properly dispose of any spillage, dripping, release, dust
13 and/or contaminated rainwater; 11) Mark and label hazardous waste containers in accordance
14 with the law; 12) Store hazardous waste in covered containers in accordance with the law; 13)
15 Store hazardous waste in only containers in good condition in accordance with the law; 14)
16 Maintain adequate aisle space in accordance with the law; 15) Remove any outstanding hazardous
17 waste required by the TRO; and 16) Allow the DTSC to conduct inspections to ensure
18 compliance with the injunction and the law. (Exh.1.)

19 **B. The Facility After Issuance of the TRO and Preliminary Injunction**

20 In October 2013, following the hearing on the TRO, Patigler hired Terry McGuinness
21 ("McGuinness") of Enviroserv to remove hazardous waste from the Facility to comply with the
22 impending TRO.² (McGuinness Decl., at ¶ 3.) McGuinness was involved with all aspects of the
23 site operation in an effort to bring the Facility into compliance with the TRO. (Id., at ¶ 4.)

24 While at the Facility, McGuinness observed numerous problems with the management of
25 the Facility. McGuinness found waste containers either unlabeled or labeled improperly. He
26 instructed Patigler to properly label containers with hazardous waste by including the word

27 _____
28 ² Since 1994, McGuinness has been hired regularly by Electro-Forming.

1 “hazardous waste,” and stating the name and address of the generator, physical state of the waste,
2 hazard properties, and initial date of accumulation, as required by California Code of Regulations,
3 Title 22 (“Title 22”), section 66262.34(f). He also explained to Patigler that containers needed to
4 be labeled the moment the initial amount of hazardous waste was placed in the container. On
5 many occasions, after Patigler told McGuinness that she did not have labels, McGuinness
6 provided her with labels to complete as required under the regulations. McGuinness explained to
7 Patigler which hazardous waste would need to be removed for off site disposal based on reaching
8 the 90-day storage limit. (McGuinness Decl., at ¶ 4.) Based on the hazardous waste designations
9 made by McGuinness, Enviroserv properly disposed of the designated hazardous waste on
10 November 20, 21, December 5, 6, and 9, 2013, and on January 2, 7, 10, February 12, 13, and
11 March 5, 2014. (Id., at 5.)

12 Starting in January 2014, it became increasingly more difficult for McGuinness to make
13 arrangements to access the Facility because Patigler would routinely not return his telephone
14 calls. Based on his knowledge of plating facilities, McGuinness opined that this Facility was
15 generating waste likely to be hazardous in the form of plating rinse waters and buffing dust on a
16 daily basis.³ Patigler made it difficult for McGuinness to access the Facility to determine the
17 quantity and type of hazardous waste required to be shipped off site in a timely manner. During
18 the first three weeks in May 2014, Patigler stopped returning McGuinness’s calls. Between May
19 16 and 19, Patigler finally responded to McGuinness and arranged for him to access the Facility
20 on May 21, 2014. While at the Facility, McGuinness took an inventory of the hazardous waste on
21 site that was ready to be shipped off for proper disposal. While evaluating the site, he noticed
22 liquid in a container with a greenish hue that Patigler identified as “rain water.” Based on his
23 professional experience, McGuinness knew that when liquid generated from a plating shop has a
24 green hue, it likely contains a high concentration of metals and therefore must be managed as a
25 hazardous waste. When questioned, Patigler admitted that perhaps it was not “rain water.”

26
27 ³ These are the very hazardous waste streams specified in the Preliminary Injunction that
28 Patigler is not allowed to use generator knowledge in making non-hazardous waste
determinations. (Exh. 1, at ¶ 8.)

1 McGuinness performed an onsite test, which indicated the water was acidic. McGuinness
2 concluded that the water was plating rinse water and was, therefore, hazardous waste and had to
3 be properly disposed of off site. (Id., at ¶ 6.)

4 On May 21, 2014, McGuinness prepared a work order for proper disposal of hazardous
5 waste generated at the Facility, which had reached the storage limit of 90 days. The work order
6 included: 1) Three full totes, which have the capacity of 275 gallons of liquid, of hazardous waste
7 strip rinse water containing corrosive liquid and liquids with nickel; 2) Five full totes of
8 hazardous waste rain water containing unspecified aqueous solution with trace metals; and 3) One
9 full 55-gallon drum of hazardous waste buffing dust and debris containing nickel, copper and
10 zinc. Enviroserv was scheduled to pick up the hazardous waste listed in the work order on May
11 30, 2014. (Id., at ¶ 7.) On May 29, 2014, McGuinness received an e-mail from Patigler cancelling
12 the pick up because the hazardous waste had already been disposed of. The last hazardous waste
13 disposal from the Facility by Enviroserv was on March 5, 2014. (Id., at ¶ 8.)

14 **C. August 18, 2014 Inspection and Violations**

15 On August 18, 2014, DTSC Senior Environmental Scientists Asha Arora and Matthew
16 McCarron conducted a compliance inspection at the Facility to ensure compliance with the
17 HWCL and this Court's Preliminary Injunction. (Asha Arora Decl., at ¶¶ 3-4; Matt McCarron
18 Decl., at ¶ 4.) The inspectors found numerous violations of the HWCL and the Preliminary
19 Injunction.

20 **1. Illegal Disposal of Hazardous Waste**

21 Parked immediately inside the Facility was a white flatbed truck piled high with garbage
22 cardboard, and a sack. Under the sack was a pile of hazardous waste sludge. When asked what it
23 was, Patigler responded, "just floor dust" and "garbage." Arora instructed Patigler not to move
24 the truck or its contents so DTSC could take samples. (Arora Decl., at ¶ 6; McCarron Decl., at ¶
25 4.) When the inspectors returned later that day, the sludge had been dispersed among the other
26 garbage throughout the truck. When asked why the waste sludge had been moved, Patigler failed
27 to respond. The analytical results from the sample of the waste sludge taken from the back of the
28

1 truck showed that the waste sludge exhibits the hazardous waste characteristics of toxicity for
2 lead, chromium, nickel, copper and selenium. (Arora Decl., at ¶ 7.)

3 Inside the buffing and polishing area of the Facility, the inspectors observed a thick layer of
4 buffing dust deposited on the ground, the tops of tables, the equipment, and all other surfaces.
5 (Arora Decl., at ¶ 8; McCarron Decl., at ¶ 7.) They observed an open 35-gallon “Rubbermaid-
6 type” garbage container located at the property line bordering the neighboring bakery equipment
7 site, separated only by a chain link fence. Inside the container, the inspectors saw clipped berry
8 bush vines topped with buffing sludge, a fine particulate metal dust generated by polishing and/or
9 buffing plated parts. The container was open and not labeled. When asked what was in the
10 container, Patigler responded, “Whoops, it’s a hazardous waste now.” Arora told Patigler that the
11 container needed to be labeled and closed when not in use. (Arora Decl. at ¶ 8; McCarron Decl.,
12 at ¶¶ 6, 13.)

13 When the inspectors looked beyond the chain link fence separating the Facility and the
14 adjacent bakery equipment property, they observed buffing dust widely deposited onto the soil
15 and bakery equipment. (Arora Decl., ¶ 9; McCarron Decl., at ¶ 7.) Adjacent to the other side of
16 the buffing area, on the property owned by Pacific Gas and Electric (“PG&E”), buffing dust was
17 also widely deposited. Arora commented to Patigler that buffing dust had been deposited offsite.
18 Patigler admitted, “I know, I know,” and stated that she was working with PG&E to clean up their
19 property. Samples were taken from the grey dust on the ground next to the fence that separates
20 the Facility from the PG&E property. The sampled dust appeared to be consistent with the dust
21 deposited on the PG&E property and the bakery equipment property. Analytical results from the
22 sample indicate that the dust from the ground exhibits the hazardous waste characteristic of
23 toxicity for copper, nickel, zinc and chromium. (Arora Decl., at ¶ 9; McCarron Decl., at ¶ 7, 15.)

24 **2. Failure to Properly Containerize and Label Hazardous Waste**

25 In the buffing area, the inspectors observed an open 55-gallon plastic drum labeled
26 “POLISHING COMPOUND Non Hazardous Material” which appeared to be over half full and
27 contained material that appeared to be buffing dust. When asked what the contents were, Patigler
28 admitted it was a hazardous waste and that she had analytical results showing the hazardous

1 characteristics for metals. Patigler stated that she thought the drum only had to be labeled when it
2 "was half full." Arora explained that containers need to be labeled when the first drop of waste
3 goes into the drum and need to be closed when not in use. Later in the day, Arora discovered that
4 the label had been changed to read "hazardous material." Arora told Patigler that the label was
5 still not correct as it needed to identify the word "hazardous waste," as well as the name and
6 address of the generator, physical state of the waste, hazard properties, and initial date of
7 accumulation. Analytical results from the samples taken from the drum indicate that the dust from
8 the drum exhibits the hazardous waste characteristic of toxicity for copper, nickel, and zinc
9 (Arora Decl., at ¶ 10; McCarron Decl., at ¶ 12.)

10 The inspectors located a full plastic garbage bag next to the 55-gallon plastic drum
11 containing soiled gloves and other unknown debris. Patigler admitted that the contents were
12 "hazardous waste." Arora told Patigler that it needed to be in a closed, properly labeled container.
13 Later, Arora observed that the contents had been transferred into an open black 55-gallon metal
14 drum and incorrectly labeled, "Hazardous Material Gloves." Arora again explained to Patigler
15 that the label was incorrect and instead should state "Hazardous Waste," as well as the other
16 information required pursuant to the applicable regulations. (Arora Decl., at ¶ 11.)

17 **3. Failure to Conduct Weekly Inspections of Hazardous Waste** 18 **Containers**

19 A generator is required to conduct weekly inspection of hazardous waste containers and
20 areas used to store hazardous waste containers to ensure that the containers are in good condition,
21 closed while not in use, properly labeled, and that the contents are compatible with the container.
22 Based on Arora's observations of the open containers and improper labeling, as well as her
23 interactions and conversations with Patigler, she concluded that the hazardous waste containers
24 and hazardous waste storage areas at the Facility had not been inspected weekly. (Id., at ¶ 12.)

25 **4. Failure to Properly Containerize and Label Hazardous Waste**

26 In the stripping area of the Facility there was a large paint stripping tank located across a
27 walkway from the secondary containment area (old waste water treatment area). Inside the
28 secondary containment area were drums used to rinse off stripped parts. Transferring parts from a

1 strip tank to rinse waters results in residues dripping onto the walkway while the transfer occurs;
2 those residues likely contain hazardous constituents. In the concrete floor adjacent to the stripping
3 area located between the strip tank and the secondary containment area, was a rectangular sump
4 that appeared to be used to collect stormwater runoff; it was located in the ground and covered
5 with a removable metal cover and did not drain anywhere. Upon Aurora's request, Patigler
6 instructed two male employees to remove the a heavy metal cover, revealing the sump to be
7 more than half-full of approximately two and a half-gallons of clear liquid. Under the clear liquid,
8 was a solid, brownish-colored sludge. Inside was an open pipe terminating into the sump. Patigler
9 explained that the pipe connects to the secondary containment area and is used to collect
10 rainwater accumulated onsite. Analytical results from the samples taken of the sump contents
11 indicated that the liquid was hazardous waste from the strip part drippings and contained
12 chromium, copper, lead, nickel and selenium at concentrations greater than the respective
13 regulatory thresholds for hazardous waste. (Arora Decl., at ¶ 13; McCarron Decl. at ¶ 11.)

14 **5. Failure to Maintain Properly Functioning Emergency Equipment**

15 While inspecting the plating area at the Facility, Arora observed the emergency eyewash
16 rinse/shower and a "Fire Extinguisher" sign with an arrow pointing to an area where there was no
17 fire extinguisher. The rinse shower had dust deposited in the collection basin and on the eyewash
18 cups which were missing the required protective covers. Generators are required to test and
19 maintain fire protection and decontamination and spill control equipment to assure its proper
20 operation in time of emergency. (Title 22, section 66265.33) When asked how often she inspects
21 her emergency equipment, Patigler failed to respond, only saying that she is "in the plating room
22 every day." Arora asked Patigler to operate the eyewash shower. When the lever was pushed the
23 water came out of the eyewash cups and the shower at a very low pressure. In the event of an
24 emergency, the extremely low water pressure generated would not be effective to wash out
25 contaminants. When asked where the fire extinguisher was, Patigler responded, "It's just a sign."
26 (Arora Decl., at ¶¶ 14, 15.)

27 //

28 //

1 **6. Failure to Submit a Completed Contingency Plan and Maintain a**
2 **Copy on Site**

3 In reviewing the Facility's records with Patigler, Arora asked for the Facility's contingency
4 plan, which is a written program developed by businesses establishing actions that must be
5 immediately implemented in an emergency situation in order to minimize hazards to human
6 health and the environment from fires, explosions or unplanned sudden release of hazardous
7 waste. Patigler was unable to produce a copy of the Facility's contingency plan, which had been
8 previously submitted online. Arora told Patigler that the plan submitted for the Facility was
9 deficient and she needed a proper plan that corrected the deficiencies by updating names and
10 telephone numbers of the emergency coordinators and explaining the arrangements with the local
11 authorities in the event of an emergency. To date, Patigler has not updated the contingency plan.
12 (Arora Decl., at ¶ 16.)

13 **7. Failure to Submit Required Source Reduction Plan**

14 Patigler admitted that she failed to prepare a source reduction plan and review documents as
15 required by Senate Bill 14 (Hazardous Waste Source Reduction and Management Review Act of
16 1989, Health and Safety Code, section 25244.12, et seq "SB14"). The source reduction plan
17 identifies all hazardous waste generated onsite and evaluates source reduction measures that will
18 be taken with respect to each hazardous waste stream with an associated timetable of
19 implementation and certified by a professional engineer. The source reduction plan must also be
20 maintained at the facility and made available to DTSC upon request. (Arora Decl., at ¶ 22.)

21 **8. Failure to Train Employees**

22 Patigler was also unable to provide Arora with a training plan and proof of appropriate
23 hazardous waste management training for her employees who are involved with hazardous waste
24 management, as that term is defined in section 25117.2. Patigler admitted that, while she signs the
25 hazardous waste manifest for Electro-Forming, she herself had not received the required training
26 for an individual who signs the hazardous waste manifests. (Arora Decl., at ¶¶ 18, 19.)

27 //

28 //

1 **9. Lack of Knowledge of Hazardous Waste Generated**

2 Based on three manifests from the Facility, (two from December 2013 and one from
3 January 2014), that showed selenium, a hazardous waste, had been disposed of from the Facility,
4 Arora asked Patigler how her plating operation generates selenium waste. Patigler responded that
5 she does not use selenium in any of her processes. However, the waste profiles, generated by
6 Enviroserv to manifest hazardous waste off-site from the Facility in order to comply with the
7 TRO, identified selenium in acid tank bottoms and in a drum of Mi-Tique solution. The wastes
8 were identified in the profiles as containing selenium based on the Facility using Patigler's
9 generator knowledge and her labeling the containers as containing selenium, the contents of
10 which were verified by McGuinness. In further support that the Facility generates selenium waste,
11 the Mi-Tique solution's Safety Data Sheet ("SDS")⁴ confirmed that the Mi-Tique solution
12 contained selenium. Nevertheless, Patigler appeared to have no knowledge how selenium waste is
13 generated at the Facility or even that it is being generated, even though Mi-Tique solution was
14 identified in Electro-Forming's Hazardous Material Inventory signed by Patigler and submitted to
15 the Contra Costa Certified Unified Program Agencies ("CUPA") on August 1, 2014, and Mi-
16 Tique solution is listed as being stored in the Facility's chemical storage locker. (Arora Decl., at ¶
17 20.)

18 **10. Failure to Properly Maintain and Submit Manifests**

19 A generator is required to maintain and to submit to DTSC generator manifests, and
20 destination facility manifests. Destination facility manifests show the hazardous waste was
21 received at the off-site destination facility. Patigler could only produce three generator manifests
22 for the Facility (November 2013, December 2013, January 2014). She did not produce the
23 manifest from May 2014. Further, she was not in possession of any of the in-state or out-of-state
24 destination facility manifests. When the generator ships hazardous waste to a destination outside
25 of California, the generator is also responsible for making a copy of the destination manifest and
26 submitting it to DTSC. (§ 25160(b)(1)(D); Title 22, § 66262.23(a)(4).) Patigler did not have any

27 ⁴ SDS is a listing of chemical properties of material that must be kept on site for
28 employees to reference and for emergency personnel to reference in case of emergencies.

1 out-of-state destination facility manifests and stated, "I am in trouble since 90 percent of my
2 waste is shipped out of state." (Arora Decl., at ¶ 21.)

3 **11. Failure to Properly Dispose of Hazardous Waste**

4 After the inspection of the Facility, Arora conducted a search of DTSC's Hazardous Waste
5 Tracking System ("HWTS"),⁵ which shows that Patigler submitted to DTSC a copy of the
6 manifest for the Facility on May 29, 2014, the date on which she informed McGuinness that she
7 had disposed of the waste that he prepared for shipment. The manifest had no record of disposal
8 of one of the totes of hazardous corrosive liquid that McGuinness had identified in his work
9 order. The remaining tote was not on site during the August 18 inspection. Arora sent Patigler an
10 e-mail on October 7, 2014, requesting that she immediately inform DTSC as to the disposition of
11 the missing tote listed in the May 21, 2014 work order. To date, Patigler has not responded and
12 has failed to account for the missing tote. (Arora Decl., at ¶ 23.)

13 **ARGUMENT**

14 **I. THE COURT SHOULD MODIFY THE PRELIMINARY INJUNCTION DUE** 15 **TO A MATERIAL CHANGE IN FACTS AND TO PREVENT HARM TO, AND** 16 **PROTECT HUMAN HEALTH AND THE ENVIRONMENT**

17 As demonstrated by the facts set forth above, Patigler's ongoing disregard for the law and
18 for this Court's Preliminary Injunction directly place her employees, neighboring facilities, the
19 community and the environment at risk. DTSC therefore seeks to modify the Preliminary
20 Injunction to enjoin Defendants, from generating hazardous waste at the Facility, until such time
21 as the underlying civil matter can be resolved. DTSC specifically seeks to enjoin Defendants from
22 engaging in: 1) any metal plating or metal stripping operations that generate plating solutions,
23 filters used for removing metal constituents in plating operations (bag/sock filters), rinse waters,
24 and drips and splashes (dragout); and 2) any buffing, polishing, or grinding operations that
25 generate buffing dust.

26 Code of Civil Procedure section 533 states: (Q) "In any action, the court may on
27 notice modify or dissolve an injunction or temporary restraining order upon a showing that there
28

⁵ The HWTS generates reports on hazardous waste shipments for generators, transporters
and treatment, storage or disposal facilities.

1 has been a material change in the facts upon which the injunction or temporary restraining order
2 was granted, that the law upon which the injunction or temporary restraining order was granted
3 has changed, or that the ends of justice would be served by the modification or dissolution of the
4 injunction or temporary restraining order.”

5 Following the issuance of a preliminary injunction, “the court possesses the inherent power
6 to modify its preliminary injunction which is of a continuing or executory nature. (See, e.g.,
7 *Sontag Chain Stores Co. v. Superior Court* (1941) 18 Cal.2d 92, 94-95; *New Tech Developments*
8 *v. Bank of Nova Scotia* (1987) 191 Cal.App.3d 1065, 1071-1072; 6 Witkin, Cal. Procedure (3d ed.
9 1985) Provisional Remedies, § 322, pp. 272-273.)” (*City of San Marcos v. Coast Waste*
10 *Management, Inc.* (1996) 47 Cal.App.4th 320, 328). Furthermore, pursuant to Health and Safety
11 Code sections 25181 and 25184, the Court is authorized and directed to enjoin any ongoing or
12 potential violation of the HWCL.

13 The HWCL and the implementing regulations contained in Title 22 are a comprehensive
14 statutory and regulatory framework designed to regulate the generation, handling, treatment,
15 transport, and disposal of hazardous wastes from cradle to grave – from the time the waste is
16 generated, through storage, transportation, and ultimately to its treatment and disposal. (Health &
17 Saf. Code, § 25100 et seq.⁶) Long-term threats are posed by, among other things, “the
18 inappropriate handling, storage, use and disposal of hazardous wastes.” (§ 25100, subd. (b).) “[I]n
19 order to protect the public health and environment ..., it is in the public interest to establish
20 regulations and incentives, which ensure that generators of hazardous waste employ technology
21 and management practices for the safe handling, treatment, recycling, and destruction of their
22 hazardous wastes prior to disposal.” (§ 25101, subd. (a).)

23 **A. THE FACILITY’S MOST RECENT VIOLATIONS RISE TO THE**
24 **LEVEL OF A MATERIAL CHANGE IN FACT UPON WHICH THE**
25 **PRELIMINARY INJUNCTION WAS GRANTED**

26 This Court issued its TRO, ordering Defendants to take steps to properly dispose of the
27 hazardous waste that the Facility had been accumulating illegally for years. It now appears,

28 ⁶ All further statutory references are to the Health and Safety Code unless otherwise
stated.

1 however, that the same mismanagement, including improper hazardous waste determinations,
2 improper containerization, storage, labeling, reporting, managing and disposing of hazardous
3 waste, that resulted in the issuance of the TRO, and ultimately, the Preliminary Injunction, remain
4 deeply entrenched in the operation of the Facility. The Preliminary Injunction meticulously states
5 exactly what Defendants must do to remain in compliance with HWCL. Nevertheless, Patigler
6 has violated almost every provision, unable to follow even its most simple provisions. Despite
7 being told multiple times over a period of many years by McGuinness, DTSC and by way of the
8 provisions in this Court's Preliminary Injunction, Patigler seems not to understand, or refuses to
9 admit, even the most basic premise, that Electro-Forming is not a small quantity generator
10 ("SQG") of hazardous waste and must follow the laws required of a large quantity generator
11 ("LQG"), including disposal of hazardous waste. Most significantly, the Facility cannot
12 accumulate waste beyond 90 days from the date of initial generation.⁷ (Exh. 1, at ¶ 5; Arora
13 Decl., at ¶ 17; McGuinness Decl., at ¶ 5.)

14 The most egregious violations include ongoing illegal disposal of hazardous waste into the
15 environment, causing ongoing and immediate threats to public health and safety, including onto
16 neighboring properties where workers are potentially exposed to the hazardous wastes. For
17 example, hazardous waste buffing dust continues to be widely deposited on the neighboring
18 properties, one of which is an ongoing business of bakery equipment. During the search based on
19 the search warrant in March 2013, DTSC identified that the Facility had been illegally disposing
20 of buffing dust on the two adjacent properties. Even though the Preliminary Injunction requires
21 that the Facility take the necessary precautions to stop this illegal disposal, this practice continues,
22 resulting in more wide-spread and severe off-site contamination. Equally concerning is that the
23 same buffing dust thickly covers everything throughout the Facility's buffing area as well as
24 contained in an open 35-gallon "Rubbermaid"- type garbage container and an open 55-gallon

25 ⁷ McGuinness repeatedly told Patigler since 2003, when she took over managing the
26 Facility, that Electro-Forming is not a SQG and must follow the rules and guidelines for a LQG
27 McGuinness even provided her with a generator status sheets in 2008 when she purchased the
28 Baker tank. (McGuinness Decl., at ¶ 5.) In 2014 Arora, explained to Patigler again that the
Electro-Forming is not a SQG. (Arora Decl., at ¶ 17.)

1 plastic drum labeled as non-hazardous material. (Arora Decl., at ¶¶ 8, 9.) The hazardous waste
2 buffing dust contains high concentrations of copper, nickel and zinc and is not being contained
3 nor being disposed of properly, but rather is being inhaled and walked on daily by the employees,
4 deposited on two properties and kept in two large, open, unlabeled containers. Airborne dusts are
5 of concern because they are well known to be associated with occupational lung diseases such as
6 the pneumoconioses, as well as with systemic intoxications such as lead poisoning, especially at
7 higher levels of exposure. There are also other dust-related diseases, such as cancer, asthma,
8 allergic alveolitis (an allergic reaction of the body to a specific substance that causes an
9 inflammation in the inner part of the lungs). Acute exposure to nickel dusts can cause pulmonary
10 edema and chronic exposure can cause squamous cell carcinoma of nasal cavity and lungs.
11 Copper dust exposure can cause eye and upper respiratory tract irritation; dermatitis; rare
12 interstitial lung disease and pulmonary fibrosis. Ingestion of copper dusts can cause nausea,
13 vomiting, diarrhea; liver damage, acute renal failure and death. (McCarron Decl., at ¶ 14.)

14 The mismanagement of the buffing dust directly violates the Preliminary Injunction
15 requiring that “all dust generated at the Facility by polishing, buffing, or grinding must be
16 immediately collected, characterized, and containerized for proper and timely disposal” and that
17 all hazardous waste to be stored in closed, properly labeled containers. (Exh. 1, at ¶¶ 10, 11, 12.)
18 During the inspection, Patigler admitted several times that she knew the buffing dust that is
19 generated at the Facility is hazardous waste based on DTSC’s prior sampling during the search
20 warrant. (Arora Decl., at ¶¶ 8-10.) Nevertheless, Patigler continues to do nothing to contain or
21 manage the buffing dust at the Facility or stop it from contaminating the two adjacent properties.⁸
22 The mismanagement of the hazardous waste buffing dust also violates Title 22, section 66265.31,
23 which requires that facilities be maintained and operated to minimize the possibility of a fire,
24 explosion, or an unplanned sudden or non-sudden release of hazardous waste or hazardous waste
25 constituents to air, soil, or surface water which could threaten human health or environment,

26
27 ⁸ The buffing machine is in an area with three walls and a ceiling. The room opens toward
28 the two adjacent properties with no physical barrier between the Facility and the two properties to
prevent the fine particulate dust from being deposited onto the properties. (Arora Decl., at ¶ 9.)

1 sections 66262.11(b) and (c), which require that a facility generating hazardous waste must make
2 a determination whether a waste is a hazardous waste by testing the waste,⁹ section 66262.34(a),
3 which references section 66265.173 requiring that containerized waste must be closed and
4 66262.34(f), requiring proper container labeling. (Arora Decl., at ¶¶ 8, 9, 10.)

5 Also concerning is the failure to track the disposal of hazardous waste. For example, one
6 tote of acid water (275 gallons of corrosive liquid and nickel) identified by McGuinness on May
7 21, 2014, has gone missing. There is no manifest showing it has been properly disposed of and it
8 was no longer at the Facility as of August 18, 2014, and Patigler has not informed DTSC of its
9 disposal. (McGuinness Decl., at ¶ 7; Arora Decl., at ¶ 23.) Because Patigler has failed to explain
10 to what happened to the missing tote, DTSC has no way of knowing whether the hazardous was
11 illegally disposed of, and if so, whether it is now threatening public health and the environment.

12 The inability to track the hazardous waste generated at the facility undermines the “cradle
13 to grave” regulatory framework of the HWCL. Further, exposure to acid corrosive liquids
14 presents a serious health risk. Acute inhalation exposure to acidic corrosive liquids causes nose
15 and throat irritation, and acute exposure to skin, eyes and oral routes causes burning and irritation.
16 Chronic inhalation symptoms include bronchitis, pulmonary edema, emphysema; eye exposure
17 leads to conjunctivitis; dermal exposure leads to dermatitis; oral exposure can lead to stomatis, or
18 an inflammation of the gums and mouth. Nickel is a known human carcinogen that can affect the
19 body if it is inhaled or comes in contact with the eyes or skin. (McCarron Decl., at ¶¶ 10, 17.)

20 If in fact the hazardous waste in the tote was illegally disposed of, it is in direct violation of
21 numerous provisions of the Preliminary Injunction (Exh. 1, at ¶¶ 1-4, 6, 8, 10-12), and in
22 violation of the HWCL, including section 25189(c), which forbids intentional or negligent
23

24
25 ⁹ The Preliminary Injunction, however, specifically enjoins Patigler from using generator
26 knowledge to determine whether buffing dust, plating sludge and other plating wastes are not
27 hazardous waste. (Exh. 1, at ¶ 8.) The mislabeled 55-gallon drum of buffing dust, the sludge in
28 the back of the truck determined to be “garbage” by Patigler, the garbage bag of “gloves”, the
unlabeled container of green hazardous waste that Patigler told McGuinness was “rainwater” are
all examples of Patigler repeatedly violating this provision. (Arora Decl. at ¶¶ 6, 10, 11;
McCarron Decl., at ¶ 12; McGuinness Decl., at ¶ 6.)

1 disposal, or causing the disposal of, a hazardous waste at an unauthorized location, or a strict
2 liability violation of the same under section 25189.2(c).

3 Another example of a serious failure to track hazardous waste is the pile of hazardous
4 waste, containing copper, lead, nickel, chromium, and selenium, found sitting in the back of the
5 pick up truck at the Facility on August 18, 2014. This hazardous waste is not containerized but
6 rather sits under bedding and on top of garbage, in direct violation of the Preliminary Injunction
7 requiring that all spillage, drippings and/or releases “be immediately collected, characterized, and
8 containerized for proper and timely disposal” and for all hazardous waste to be stored in covered
9 containers (Exh. 1, at ¶¶ 1-4, 6,10-13), as well as a violation of numerous statutory and regulatory
10 provisions including Title 22, section 66262.10, which requires that hazardous waste must be
11 managed and disposed to an authorized facility, section 25189(c) or 25189.2(c), and as discussed
12 above.

13 Even more disturbing is the fact that, even after the inspectors told Patigler that they would
14 be taking samples of the sludge later in the day and to not move the contents of the truck, the
15 hazardous waste was tampered with, mixed all around the truck with the trash, in what appeared
16 to be an effort to conceal the hazardous waste. (Arora Decl., at ¶¶ 6, 7.) The various chemicals
17 found in the hazardous waste in the truck are all highly toxic. Copper is an eye, skin, respiratory
18 and gastrointestinal tract irritant and is highly toxic to fish. Lead is harmful to humans when
19 ingested or inhaled, particularly to children under the age of six, as it is particularly detrimental to
20 the neurological development of children. Chromium is a human carcinogen, resulting in an
21 increased risk of lung cancer when inhaled. Short term exposure to selenium results in irritation
22 of the mucous membranes, pulmonary edema, severe bronchitis, and bronchial pneumonia, while
23 selenium in food and water cause discoloration of the skin, pathological deformation and loss of
24 nails, loss of hair, excessive tooth decay and discoloration, lack of mental alertness, and
25 listlessness. (McCarron Decl., at ¶ 10.)

26 Another serious violation of both the Preliminary Injunction and the HWCL is the
27 hazardous waste sludge sitting in the sump area, which includes chromium, copper, nickel and
28 selenium. (McCarron Decl., at ¶ 12.) When the rain comes, this contaminated water will rise, run

1 out of the sump, and into the street, contaminating the neighborhood and the sewer system. The
2 egregious effects on human health of these hazardous waste elements have been discussed above.
3 (Id., at ¶ 11.) Patigler has violated the Preliminary Injunction in that any spillage or dripping or
4 release from plating or stripping operations as well as any containment rainwater are to be
5 immediately collected, characterized, and containerized for proper and timely disposal. (Exh. 1, at
6 ¶ 10.) The mismanagement of the hazardous waste in the sump is also a violation of Title 22,
7 sections 66262.11(b) and (c) and section 66265.31, as discussed above. (Arora Decl., at ¶ 13;
8 McCarron Decl. at ¶ 11.)

9 The selenium sitting in the sump is of great concern because Patigler has no idea how or
10 why her shop generates selenium and outright denies that she uses selenium even though
11 manifests indicate that selenium was found in acid tank bottoms, acid shop debris, floor cleaner
12 waste and in a drum of Mi-Tique solution, the latter of which is located in her chemical storage
13 locker and is identified in the hazardous materials business plan that she submits to the CUPA
14 annually. (Arora Decl., at ¶ 20.). This is particularly disconcerting because, if Patigler does not
15 understand the properties of the hazardous waste that the Facility is generating, it is likely that she
16 will not take appropriate steps to manage and disposed of that waste properly, as is evident by the
17 two and a half gallons of hazardous waste collecting in a sump area containing, among other
18 chemicals, selenium, which cause serious health hazards, as discussed above.

19 The plastic garbage bag full of hazardous waste that was not properly containerized or
20 labeled also violates both the Preliminary Injunction and the HWCL and is a prime example of
21 Patigler's refusal to follow the law even when so directly instructed. When told to containerize
22 and properly label the hazardous waste, Patigler instead transferred the hazardous waste to an
23 open metal drum and mislabeled it as "Hazardous Material Gloves." The mismanagement of the
24 hazardous waste violates the provisions of the Preliminary Injunction requiring that hazardous
25 waste be immediately collected, characterized, containerized in closed, properly labeled
26 containers (Exh. 1, at ¶¶ 10-13), and violates the HWCL, including Title 22, section 66262.34(f)
27 that requires that each container used on site at a facility for the accumulation of hazardous waste
28

1 must be clearly marked with, inter alia, the date upon which accumulation of hazardous waste
2 began and the words "Hazardous Waste." (Arora Decl., at ¶ 11.)

3 Patigler is sued herein as the owner and operator of the Facility, in her individual and
4 representative capacity. The violations of the HWCL and the requirements of the Preliminary
5 Injunction are more than just paperwork violations. Patigler is operating the Facility in a manner
6 that creates conditions that are dangerous to her employees who are exposed to the conditions at
7 the Facility on a daily basis, pose a serious threat the immediate neighbors, which include the Bay
8 Area rescue mission's homeless who eat across the street and the residents located in the vicinity
9 of the Facility, and cause harm to the surrounding environment. Through her actions, Patigler has
10 shown that she is incapable of following the law or this Court's order. Thus, a further injunction
11 must issue as against all Defendants.

12 CONCLUSION

13 In order to prevent this harm to, and protect the health of, humans and the environment, the
14 Defendants, including Patigler, must be enjoined from generating hazardous waste.

15
16 Dated: October 17, 2014

Respectfully Submitted,

17 KAMALA D. HARRIS
18 Attorney General of California
19 MARGARITA PADILLA
20 Supervising Deputy Attorney General



21 HEIDI T. SALERNO
22 Deputy Attorney General
23 *Attorneys for Plaintiff People of the State*
24 *of California, ex rel. Miriam Barcellona*
Ingenito, Acting Director of the
Department of Toxic Substances Control

25 OK2013509190
26 90445669.doc

EXHIBIT 1

Attorney General's Office
Copy

KAMALA D. HARRIS
Attorney General of California
MARGARITA PADILLA
Supervising Deputy Attorney General
KIRK MCINNIS
HEIDI SALERNO
Deputy Attorneys General
State Bar Nos. 130952/157335
1515 Clay Street, 20th Floor
P.O. Box 70550
Oakland, CA 94612-0550
Telephone: (510) 622-2191/622-2207
Fax: (510) 622-2270
E-mail:

Kirk.McInnis@doj.ca.gov/heidi.salerno@doj.ca.gov
*Attorneys for Plaintiff People of the State of
California, ex rel. Deborah O. Raphael, Director of
the Department of Toxic Substances Control*

EXEMPT FROM FILING FEES
GOVERNMENT CODE § 6103

FILED

2014 MAR -5 A 9 03

STEPHEN H. NASH
CLERK OF THE SUPERIOR COURT
COUNTY OF CONTRA COSTA, CA

BY: _____
DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF CONTRA COSTA

PEOPLE OF THE STATE OF
CALIFORNIA, ex rel. DEBORAH O.
RAPHAEL, DIRECTOR OF THE
DEPARTMENT OF TOXIC
SUBSTANCES CONTROL,

Plaintiff,

v.

ELECTRO-FORMING, CO.; MARION
PATIGLER; THE ESTATE OF
GERHARD PATIGLER; THE ESTATE
OF INGRID PATIGLER; AND DOES 1-50

Defendants.

Case No. C 13 - 01691

[PROPOSED] ORDER RE: PLAINTIFF'S
PRELIMINARY INJUNCTION MOTION

Date: January 15, 2014

Time: 9:00 a.m.

Dept: 33

Judge: The Honorable Steve K. Austin

The Court, having considered the pleadings, which include without limitation, the Complaint, the Declarations of Michael Pixton, Diana Peebler, Essam Eissa, Robert Hrabak and Ben Beauchaine, the Request for Judicial Notice, and the Memorandum of Points and Authorities in support of the Application for Temporary Restraining Order and Order to Show Cause re: Preliminary Injunction, all on file in the above-entitled action, and any other further

[PROPOSED] ORDER RE: PRELIMINARY INJUNCTION C 13 - 01691

supporting documents, which may be filed, as well as the parties respective oral arguments:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

Defendants Electro-Forming, Co., Marion Patigler, the Estate of Gerhard Patigler, and the Estate of Ingrid Patigler, your representatives, employees, agents, successors in interest, assignees, attorneys in fact, and all other persons, corporations, partnerships, or other entities acting by, through, under you or on your behalf and all persons acting in concert with or for you with actual or constructive knowledge are HEREBY RESTRAINED AND ENJOINED from violating the Hazardous Waste Control Law, Chapter 6.5 of Division 20 of the Health and Safety Code ("HWCL"), Health & Saf. Code section 25100 et seq, and its implementing regulations, California Code of Regulations, Title 22, Division 4.5 (Title 22) as follows:

1. Defendants shall not dispose, or cause the disposal of any hazardous waste at the Electro-Forming, Co. Facility located at 130 Nevin Avenue, Richmond, California ("the Facility"), which includes inter alia drains, sinks, toilets, the ground surface or subsurface of the ground at the Facility or any other location, or any point not authorized or permitted by the Department of Toxic Substances Control ("the Department") pursuant to the Hazardous Waste Control Law, Health and Safety Code section 25100 *et seq.* Unauthorized location(s) include, but are not limited to, any landfill or transfer station not permitted to receive, store, treat or dispose of hazardous waste by the Department. Hazardous waste includes, but is not limited to, plating sludges, plating solutions, filters used for removing metal contaminants in plating operations (e.g. bag/sock filters), rinse waters generated from plating or stripping operations, drips and splashes (dragout) from plating or stripping operations, fine particulate dust containing metals generated by buffing, polishing, and grinding, and contaminated rainwater collected at the property that are hazardous.

2. Defendants shall not transport hazardous waste unless the Defendant(s) transporting the hazardous waste hold(s) a valid registration issued by the Department to do so, pursuant to Health and Safety Code section 25163.

3. Defendants shall not deliver hazardous waste or cause hazardous waste to be delivered to any location other than a hazardous waste facility that has a valid permit or is otherwise authorized by the Department to receive hazardous waste, pursuant to California Code of Regulations, title 22, section 66263.23.

4. Defendants shall not treat any hazardous waste without a permit or other authorization from the Department, as required by Health and Safety Code section 25201(a). This includes, but

1 is not limited to, treatment of hazardous waste containing cyanide or metals, in any manner
2 requiring a hazardous waste facilities permit or other grant of authorization from the Department,
3 including, but not limited to, boiling off any cyanide or metal-containing solutions in a tank or
4 container, mixing cyanide and metal-containing plating wastes, including plating and stripping
5 rinse waters, in a tank or container, and evaporation of hazardous waste containing cyanide or
6 metals in a tank or container, including "kiddie" pools.

7 5. Defendants shall properly and timely dispose of accumulated hazardous waste within
8 ninety (90) days of the initial accumulation date as provided by California Code of Regulations,
9 Title 22, section 66262.34.

10 a. Defendants shall prepare a complete and correct hazardous waste manifest for all
11 hazardous waste in accordance with the Hazardous Waste Control Law, Health and Safety
12 Code section 25100 *et seq.*, Health and Safety Code section 25160(b), and the
13 implementing regulations including instructions included in the Appendix to Chapter 12,
14 Division 4.5, Title 22, California Code of Regulations.

15 b. Defendants shall use a valid generator ID number to ship the hazardous waste in
16 accordance with California Code of Regulations, title 22, section 66262.12.

17 c. Defendants shall ship the hazardous waste only to facilities authorized to accept
18 the waste type in accordance with California Code of Regulations, title 22, section
19 66262.20.

20 6. Defendants shall not transfer, manage, store, or treat hazardous waste in any tank at
21 the Facility without first obtaining and providing to the Department a written assessment
22 reviewed and certified by an independent, qualified professional engineer, registered in
23 California, attesting that the tank system or components have sufficient structural integrity, are
24 acceptable for the waste handling activity, and are suitably designed pursuant to California Code
25 of Regulations, title 22, section 66265.192.

26 7. Defendants shall conduct and correctly document the daily inspections of hazardous
27 waste tank systems, data from monitoring and leak detection equipment, and the area immediately
28 surrounding the tank system to detect corrosion, releases of wastes, or signs of releases of wastes

1 (e.g. wet spots, dead vegetation) in accordance with California Code of Regulation, title 22,
2 sections 66265.195(a) and (c).

3 8. Defendants must properly perform a hazardous waste determination for all waste at the
4 Facility in accordance with the method identified in California Code of Regulations, title 22,
5 section 66262.11, except that Defendants may not use the methods provided in California Code of
6 Regulations, title 22, sections 66262.11(b)(2) and (c)(2) to determine that the following wastes
7 are not hazardous: plating sludges, plating solutions, filters used for removing metal contaminants
8 in plating operations (e.g. bag/sock filters), rinse waters generated from plating or stripping
9 operations, drips and splashes (dragout) from plating or stripping operations, fine particulate dust
10 containing metals generated by buffing, polishing, and grinding, and rainwater collected at the
11 property.

12 9. Defendants shall comply with California Code of Regulations, title 22, sections
13 66265.17 and 66265.177 and properly manage all Ignitable, Reactive, or Incompatible Hazardous
14 Wastes at the Facility.

15 a. Defendants shall take precautions to prevent accidental ignition or reaction of
16 ignitable or reactive waste at the Facility including, but not limited to, ensuring that a
17 container holding a hazardous waste that is incompatible with any waste or other materials
18 (e.g. cyanides are incompatible with solutions with a pH that may cause the release of
19 hydrogen cyanide gas; low pH (acid) wastes or materials are incompatible with high pH
20 (base) wastes or materials) transferred or stored nearby in other containers, piles, open
21 tanks, or surface impoundments shall be separated from the other materials or protected
22 from them by means of a dike, berm, wall, or other device.

23 10. Defendants shall comply with California Code of Regulations, title 22, section
24 66265.31 and maintain and operate the Facility in a manner that minimizes the possibility of
25 release of hazardous waste.

26 a. Any spillage and dripping (dragout) or release from plating or stripping operations
27 must be immediately collected, characterized, and containerized for proper and timely
28 disposal.

1 b. All dust generated at the Facility by polishing, buffing, or grinding must be
2 immediately collected, characterized, and containerized for proper and timely disposal.

3 c. In a rain event, all contaminated rainwater contained on the property must be
4 collected, characterized, and containerized for proper and timely disposal.

5 11. Defendants shall comply with California Code of Regulations, title 22, sections
6 66262.32 and 66262.34(f) regarding the marking and labeling of hazardous waste containers at
7 the Facility.

8 a. Defendants must ensure that all hazardous waste containers at the Facility are
9 clearly labeled or marked with the information required in section 66262.32(a) and (b)(1)
10 and (2), including but not limited to: the applicable United States Department of
11 Transportation regulations on hazardous materials under 49 CFR part 172 and the words
12 "Hazardous Waste" and contain the following information: 1) Generator's Name and
13 Address, Manifest Document Number, Generator's EPA ID Number, and Manifest
14 Tracking Number. Additionally, it shall include a composition of and physical state of the
15 wastes; 2) statement which calls attention to the particular hazardous properties of the
16 waste (e.g. flammable, reactive, etc.); and 3) the date the accumulation time begins for the
17 hazardous waste.

18 12. Defendants shall comply with California Code of Regulations, title 22, section
19 66265.173 and store hazardous waste at the Facility in covered containers.

20 13. Defendants shall comply with California Code of Regulations, title 22, section
21 66265.171 and store hazardous waste at the Facility in only containers in good condition.

22 14. Defendants shall comply with California Code of Regulations, title 22, section
23 66265.35 and maintain adequate aisle space at the Facility to allow the unobstructed movement of
24 personnel, fire protection equipment, spill control equipment, and decontamination equipment.

25 15. Defendants shall comply with California Code of Regulations, title 22, section
26 66265.174 and conduct weekly inspections of hazardous waste storage areas at the Facility
27 looking for leaking containers and for deterioration of containers and the containment system
28

1 caused by corrosion or other factors, and, if so discovered, Defendants shall take immediate
2 corrective action.

3 16. The Department, any authorized representative of the Department, or any authorized
4 representative of the Contra Costa County Health Services Hazardous Materials Program are
5 authorized access to the Facility to ensure compliance with the terms set forth in this Preliminary
6 Injunction and conduct inspections in accordance with law.

7 17. Any outstanding hazardous waste removal required by the Temporary Restraining
8 Order ("TRO") dated November 8, 2013, which has not been removed as of this date, must be
9 removed in accordance with the TRO immediately.

10
11 IT IS SO ORDERED.

12
13 DATED: 2-6-14

STEVEN K. AUSTIN

14
15 THE HONORABLE STEVE K. AUSTIN
16 JUDGE OF THE SUPERIOR COURT
17
18
19
20
21
22
23
24
25
26
27
28

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: People v Electro-Forming, Co., et al.
No.: C 13-01691

I declare:

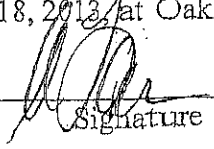
I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On December 18, 2013, I served the attached [PROPOSED] ORDER RE: PLAINTIFF'S PRELIMINARY INJUNCTION MOTION by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 1515 Clay Street, 20th Floor, Oakland, CA 94612-0550, addressed as follows:

James E. Reed
Attorney at Law
Nichols, Catterton, Downing & Reed
3433 Golden Gate Way, #C
Lafayette, CA 94549
Defendants

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on December 18, 2013, at Oakland, California.

Ann Lauber
Declarant


Signature